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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Docket No. 573-1

Prior Application: 09/725,608

Filed: November 29, 2000

Commissioner of Patents and Trademarks
Washington, D.C. 20231

"EXPRESS MAIL" MAILING LABEL NUMBER E1563079632US

DATE OF DEPOSIT

Dec. 28, 2001

I HEREBY CERTIFY THAT THIS CORRESPONDENCE IS BEING DEPOSITED WITH THE UNITED STATES POSTAL SERVICE "EXPRESS MAIL POST OFFICE TO ADDRESSEE" SERVICE
COMMISSIONER OF PATENTS AND TRADEMARKS, WASHINGTON, D.C. 20231

THOMAS M. FREIBURGER, Reg. No. 27,063

SIGNED

Thomas M. Freiburger

DATE

12-28-01

FILING OF DIVISIONAL PATENT APPLICATION

I. This is a request for filing a divisional application of pending prior application Serial No. 725,608, filed November 29, 2000, ELLEN M. TROYER, ET AL for TREATMENT OF DRY EYE SYNDROME.

1. Copy of Prior Application as Filed Which is Attached

I hereby verify that the attached papers are a true copy of what is shown in my records to be the above identified prior application, including the oath or declaration originally filed.

The copy of the papers of prior application as filed which are attached are as follows:

16 pages of specification

5 pages of claims

1 page of abstract

2 pages of declaration with power of attorney

4 pages of petition and attachments (re: uncooperative inventor)

2. Amendments

A preliminary amendment is enclosed.

1040 U.S. PTO
10/040508

12/28/01

3. Fee Calculation

CLAIMS AS FILED (After Preliminary Amendment)

	Number Filed	Number Extra	Rate	Basic Fee \$370.00
Total Claims	7	-	-	
Independ. Claims	1	-	-	

Filing Fee Calculation \$ 370.00

4. Relate Back -- 35 U.S.C. 120

Amend the specification by inserting on page 1 after

"Background of the Invention":

This application is a division of application
Serial No. 09/725,608, filed November 29,
2000, now _____.

A clean copy of page 1 is enclosed.

5. Inventorship Statement

(a) With respect to the prior copending U.S. application from which this application claims benefit under 35 U.S.C. 120, the inventors in this application are the same.

(b) The inventorship for the claims in this application are the same.

6. Fee Payment

The filing fee of \$370 is enclosed (credit card authorization).

8. Power of Attorney

The power of attorney in the prior application is to:

Thomas M. Freiburger

Reg. No. 27,063

The power appears in the original papers in the prior application.

Address all future communications to:

Thomas M. Freiburger
650 California Street, 25th Floor
San Francisco, California 94108
(415) 781-0310

I further declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code, and that such willful false statements may jeopardize the validity of the application or any patent issuing thereon.

Respectfully submitted,



Dated: December 28, 2001

Thomas M. Freiburger
Reg. No. 27,063
650 California St., 25th Floor
San Francisco, California 94108
(415) 781-0310
Attorney of record

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Patent Application of) Examiner:
E. M. Troyer, et al.) Group Art Unit: 1614
Serial No.: 09/725,608) File No: 573P
Filed: November 29, 2000)
For: TREATMENT OF DRY EYE SYNDROME) San Francisco, California

Hon. Commissioner of Patents and Trademarks
Washington, D.C. 20231

I HEREBY CERTIFY THAT THIS CORRESPONDENCE IS BEING DEPOSITED WITH THE UNITED STATES POSTAL SERVICE AS FIRST CLASS MAIL IN AN ENVELOPE ADDRESSED TO: COMMISSIONER OF PATENTS AND TRADEMARKS, WASHINGTON, D.C. 20231

ON

THOMAS M. BREIBURGER, Reg. No. 27,063

SIGNED

DATE

PETITION UNDER 37 CFR § 1.47

One of the four inventors, Richard Kaufman, refuses to sign the declaration and to join in this application.

The other three named inventors (listed on the filing receipt) advised the undersigned attorney on about October 31, 2000, during the preparation of this application, that Richard Kaufman was a co-inventor of the subject matter to be claimed. The client for the patent application is Science Based Health, a Nevada corporation. On November 21, 2000 the undersigned wrote and sent the letter now enclosed as Attachment A, to Mr. Kaufman at the last address known to the other inventors for Mr. Kaufman (2554 Lincoln Blvd., Apt. 250, Marina Del Rey, California 90292). As shown in Attachment A, Mr. Kaufman was requested to cooperate by signing a patent application declaration as well as an assignment for the patent application. On November 28, 2000 Mr. Kaufman telephoned the undersigned in response to the letter.

The undersigned offered to send the application and documents to Mr. Kaufman for signature. Mr. Kaufman indicated he was very familiar with the subject matter and his contribution to the invention, and stated to the undersigned that he refused to sign any documents to join in the application or to confirm his transfer of rights in the application. Mr. Kaufman's refusal was so peremptory and unconditional (in the absence of payment) as to render pointless any further attempt to send the application and declaration to him. A *bona fide* attempt to present the application and declaration was made in the telephone conference. Mr. Kaufman stated that he would consider an offer for payment of money by ScienceBased Health as inducement to sign the documents, but would not sign under any other circumstance (regarding signing the documents, Mr. Kaufman said "What for, out of the goodness of my heart?"). The undersigned replied that payment would probably not be acceptable to the client, who already owned the subject matter. The client's president, R. Scot Hunter, confirmed by telephone to the undersigned on that same day that the client was not willing to pay Mr. Kaufman to sign. Thus, no further contact was made with Mr. Kaufman.

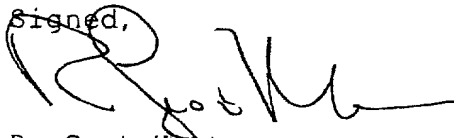
The undersigned also explained these facts to the other inventors and asked them to sign the declaration on behalf of all inventors. In the interest of time the application was filed without signatures on November 29, 2000, and the inventors Troyer, Thornton and Whiting later signed the declaration, which is now enclosed.

This declaration is made by the undersigned attorney because he has direct knowledge of all the above facts and was the sole party who made the contact with Richard Kaufman. This declaration is joined in by R. Scot Hunter, the client's president, in regard to facts known to him concerning unwillingness to pay Mr. Kaufman.

I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

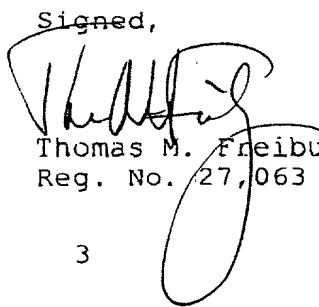
Date: April 6, 2001

Signed,


R. Scot Hunter

Date: April 9, 2001

Signed,


Thomas M. Freiburger
Reg. No. 27,063

ATTACHMENT A

TELEPHONE
(415) 781-0310

LAW OFFICES OF
THOMAS M. FREIBURGER
PATENT, TRADEMARK & COPYRIGHT LAW
650 CALIFORNIA STREET, 25TH FLOOR
SAN FRANCISCO, CALIFORNIA 94108

FACSIMILE
(415) 981-5027

November 21, 2000

Mr. Richard Kaufman
2554 Lincoln Blvd., Apt. 250
Marina Del Rey, California 90292

VIA FACSIMILE
310-823-8041

Re: ScienceBased Health, Patent Application

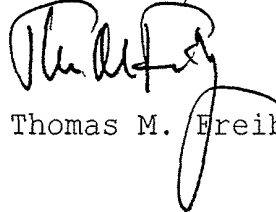
Dear Mr. Kaufman:

I represent ScienceBased Health, with which you formerly had some dealings relative to health supplement formulations. We are in the final stages of preparing a patent application on an oral treatment for dry eyes. Although the formulation has been changed after continued testing conducted by my client, you were involved in the original formulation and I believe you should be considered a co-inventor of the current product.

This letter is to ask your cooperation in signing an inventor's declaration for the patent application on the dry eye treatment formulation, as well as signing an assignment confirming transfer of all rights in the application to the company (which, as you know, already owns the formulation).

I would appreciate your contacting me as soon as possible by telephone or fax.

Yours very truly,



Thomas M. Freiburger

TMF/sc
cc: ScienceBased Health